

Claimant underwent treatment with orthopedic surgeon John A. Pazell, M.D. The treatment included an arthroscopy of the right knee, including a partial lateral meniscectomy, debridement of the lateral femoral condyle, lateral tibial plateau, excision of the plica and synovectomy.

On September 19, 1994 claimant was evaluated and released by Dr. Pazell with the right knee being assessed a 22 percent permanent disability in Dr. Pazell's October 10, 1994 report. During his final knee examination, Dr. Pazell found the claimant's articular surface to be smooth with no loose bodies identified and the joint space well preserved. There was no subluxation nor chondromalacia noted in the knee. Claimant was returned to work at his regular employment in May of 1994 and continued doing his job with the exception of loading shingles onto roofs. Claimant walked, climbed trucks, lifted and squatted, while performing his regular job duties as a delivery person for the lumber company.

Claimant regularly performed a second job, that being umpiring slow-pitch softball games during the spring, summer, and fall. Claimant returned to umpiring slow-pitch softball games in May of 1994 and continued through the end of the 1996 season. During 1996, he testified that he began experiencing a few problems with the right knee but completed the season.

In December of 1996, while shopping claimant went into a full squat in order to look at something on the store's bottom shelves. When he stood up and turned to step away, his knee collapsed or, as claimant described it, "blew out." Claimant was then forced to seek additional medical treatment.

At the preliminary hearing of April 22, 1999, the Administrative Law Judge considered the reports of Adam I. Harris, M.D., a board eligible surgeon, who examined the claimant on August 11, 1997. Dr. Harris provided treatment and made recommendations for the claimant but did not determine the cause of claimant's symptoms other than noting a history of a right knee injury while playing football in high school. This report was rejected by the Administrative Law Judge following claimant's testimony that he had never suffered an injury while playing football in high school and had absolutely no idea where Dr. Harris elicited that information.

The Administrative Law Judge also had the opportunity to review the medical reports of Dr. Pazell. In Dr. Pazell's November 24, 1997, letter to claimant's attorney, the doctor stated that claimant's examination indicated evidence of a new medial meniscus tear which was more significant than the findings from the 1994 exam. Dr. Pazell went on to state, "I believe this is a new injury." This report was generated after Dr. Pazell had the opportunity to examine claimant on November 17, 1997, in his office.

Apparently, experiencing some dissatisfaction with that report, claimant met with Dr. Pazell on July 28, 1998. This was a meeting and not an examination. As a result of

that meeting, Dr. Pazell issued a second report of July 29, 1998, in which he stated that the original meniscal capsular tear measured less than 1 centimeter. He opined these types of injuries generally respond to trephining, which was described as poking small holes in the meniscus in order to generate new growth, and this size of a tear would generally not require repair. He went on to speculate, "This could have healed, but healed in a weakened manner, and if it were not but for this tear, he may not have had the re-injury. Therefore, I think you could postulate an extension of his initial injury to his subsequent injury."

For reasons unknown, Dr. Pazell then issued a third letter to claimant's attorney dated January 29, 1999, at which time he noted that claimant had suffered a right knee medial meniscus tear. He further opined that, "It is my opinion that this meniscus tear is directly related to his original injury and that this is going to require further medical treatment in the way of an arthroscopy and possible meniscal repair."

Dr. Pazell's examination of claimant's right knee on September 19, 1994, displayed no McMurray's or Watson-Jones signs, no instability or stressing, and the remaining tests were negative or normal. The right knee showed flexion of 130 degrees and full extension. After the December 1996 incident, claimant was no longer able to fully extend his knee. The inconsistencies between Dr. Pazell's reports caused the Administrative Law Judge to reject his opinion.

The Administrative Law Judge denied claimant benefits in April 1999, finding Dr. Harris' report, involving the unremembered football injury, "suspect" and Dr. Pazell's remarks of January 29, 1999, unsupported by any recent examination and somewhat inconsistent with the comments made by Dr. Pazell in his earlier reports.

The Administrative Law Judge then referred claimant for an independent medical examination with orthopedic surgeon, Brian E. Healy, M.D., of Kansas City, Missouri. Dr. Healy examined claimant on July 14, 1999. While Dr. Healy made several recommendations for treating claimant's knee, he was unable at that time to determine the exact cause. He did note that during the examination claimant displayed a positive McMurray's which seemed to emulate from the medial side of the knee, and a positive pivot shift test, both of which he went on to state, "would certainly correlate with the second event that he had in December of 1996 when his knee went out while Christmas shopping."

In workers' compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g). The Appeals Board agrees the opinion of Dr. Harris is suspect since it involves an old football injury, the existence of which claimant vehemently denied. It also questions the varying opinions of Dr. Pazell.

The Appeals Board finds the opinion of Dr. Healy to be the most credible, where he states that the positive pivot shift test and positive McMurray's sign correlate well with the

December 1996 shopping injury. The Appeals Board finds claimant's ongoing knee problems do not appear to be related to the 1994 accident with respondent, but rather to intervening injuries associated with either his softball umpiring or the December 1996 shopping incident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated November 18, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

c: Michael J. Joshi, Kansas City, MO.
John B. Rathmel, Overland Park, KS.
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director